IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 40233 of 2003(M)

PETITIONER:

K.N.SURENDRAN, 47/991-A, ASHOKA CROSS ROAD, KOCHI-17 (FORMERLY LT. CDR., INDIAN NAVY)

BY ADV. SRI.P.SANJAY

RESPONDENTS:
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1. **SECRETARY, UNION OF INDIA, MINISTRY OF DEFENCE, SOUGH BLOCK, NEW DELHI-110 011.**

2. **THE CHIEF OF THE NAVAL STAFF, NAVAL HEADQUARTERS, SOUTH BLOCK, NEW DELHI-110 011.**

3. **THE FLAG OFFICER COMMANDING IN CHIEF EASTERN NAVAL COMMAND, NAVAL BASE, VIZHAKAPATNAM, C/O. FMO, VISAKHAPATNAM.**

4. **VICE ADMIRAL (THEN REAR ADMIRAL) BARIN GHOSE CHIEF OF LOGISTICS (THEN ASST.CHIEF OF LOGISTICS) NAVAL HEADQUARTERS, SENA BHAVAN, NEW DELHI-110 011.**

5. **COMMODORE MOHAN PHADKE THE JUDGE ADVOCATE GENERAL (NAVY) NAVAL HEADQUARTERS, SENA BHAVAN, NEW DEHI-110 011.**

6. **COMMANDER R.K.MEHTA THE TRIAL JUDGE ADVOCATE, NAVAL HEADQUARTERS, SENA BHAVAN, NEW DELHI-110 011.**

7. THE COMMANDING OFFICER,
INS JARAWA, C/O.FLEET MAIL OFFICE, PORT BLAIR,
ANDAMAN AND NICOBAR ISLANDS.

BY ADV. SRI. VIKAS SINGH, ADDL. SOLICITOR GENERAL
ADV. SRI. P. GOPINATHA MENON, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON 16/10/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 40233/2003 M

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE CHARGE SHEET.

EXT.P2. COPY OF THE FINDINGS AND SENTENCE OF THE COURT MARTIAL.

EXT.P3. COPY OF THE JUDGMENT DT. 2/08/02.

EXT.P4. COPY OF THE ORDER DT. 31/10/2002 OF THE CHIEF OF NAVAL STAFF ALONG WITH COVERING LETTER DT. 6/11/2002.

EXT.P5. COPY OF THE LETTER DT. 27/11/02, 16/11/03, 10/2/2003, 25/2/2003, 12/5/2003, 26/08/2003 AND 13/11/2003.

EXT.P6. COPY OF THE APPEAL DT. 4/3/03 TO R1.

EXT.P7. COPY OF THE ORDER DT. 17/09/03.

EXT.P8. COPY OF THE ORDER DT. 26/08/03 OF THE R1.

EXT.P9. COPY OF THE ORDER NO. NL/1300/MF/185/US(P) D (N-11 2004 DT. 10/2/2004 (IN I.A NO. 4962/2004 IN WPC NO. 40233/2003)

EXT.P9. COPY OF THE JUDGMENT IN CONT. CASE NO. 939/03 DT. 17/09/2003.

EXT.P10. COPY OF THE JUDICIAL REVIEW REPORT NO. 6/96 DT. 1/7/96.

EXT.P11. COPY OF THE EXTRACT OF PARA 29 AND 31 OF NAVY ORDER NO. 3/S/82.

EXT.P12. COPY OF THE RESPONDENT'S COUNTER AFFIDAVIT IN WPC NO. 12185/97.

EXT.P13. COPY OF THE REPLY AFFIDAVIT TO RESPONDENT'S COUNTER AFFIDAVIT IN WPC NO. 12185/97.

EXT.P14. COPY OF THE EXTRACT OF NAVY INSTRUCTION 95/69.

EXT.P15. COPY OF THE EXTRACT OF RESPONDENTS SIGNAL DTG NO. 061701/OCTOBER 94.

EXT.P16. COPY OF THE COMMUNICATION OF CHIEF OF NAVAL STAFF DT. 30/10/85.

EXT.P17. COPY OF THE APPLICATION MADE BY THE PETITIONER UNDER RTI ACT.

EXT.P18. COPY OF THE ORDER DT. 20/6/07.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE COUNTER AFFIDAVIT DT. 22/7/04 IN WPC NO. 40233/2003.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.40233 of 2003-M

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Dated this the 16th day of October, 2007.

JUDGMENT

"CR"

This writ petition is filed challenging the decisions contained in Exts.P2, P4 and P8 by which the writ petitioner, charge-sheeted as per Ext.P1, was imposed punishment following trial by Court Martial and such decision confirmed by the competent authorities, in appeals.

2. Petitioner governed by the provisions of the Navy Act, 1957, hereinafter referred to as the "Act", was posted in Port Blair in Andaman and Nicobar Islands as the Base Victualing Officer with responsibility of supplying dry

and fresh rations to troops of the Army, Navy and Air Force and their families positioned in Andaman and Nicobar Islands. Ext.P1 charge-sheet was issued on different counts relatable to discharge of his duties and responsibilities in Andaman and Nicobar Islands. By Ext.P2, he was found guilty of six out of seven charges, following trial by Court Martial at Port Blair. He was relieved from Naval Service immediately thereafter. After remitting the fine imposed on him, he submitted a petition before the Judge Advocate General seeking judicial review. He was, thereafter, advised by order dated 24-10-1996 that the Chief of the Naval Staff had retained the conviction and sentence. Petitioner, therefore, filed an appeal to the Central Government under Section 162 of the Act. That was rejected on 7-4-1997. He filed O.P.12185/1997 before this Court. That led to Ext.P3 judgment. This Court came to the conclusion that the report of the Judge Advocate General had not received proper attention of the CNS and that a re-consideration

was required and accordingly, the decision of the CNS and that of the Government of India, in appeal, were quashed directing re-consideration. Thereafter, the CNS issued Ext.P4 order maintaining the findings recorded on Charges 1, 2, 3, 4 and 6. That order has been confirmed by the Government of India by Ext.P8 appellate order.

3. Though elaborate pleadings have been placed on record and the relevant official records were also summoned to be placed before this Court, it has been argued on behalf of the respondents that the question of jurisdiction may be considered since, according to the learned Additional Solicitor General, the writ petition is not sustainable before this Court in terms of Article 226 of the Constitution of India.

4. On the issue as to jurisdiction, the learned counsel for the petitioner submitted that no plea as to lack of jurisdiction is raised in the counter affidavit of the official

respondents and that such an issue is sought to be agitated only through the counter affidavit of the additional respondents who were brought on record in their personal capacity.

5. The power conferred by Clause (1) of Article 226 of the Constitution to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. This is the content of Clause (2) of Article 226. This means that the writ petition challenging the decisions contained in Exts.P2, P4 and P8 could be entertained by this Court only if, at least, a part of the cause of action in relation to the impugned action arises within the territories to which the jurisdiction of this

Court extends.

6. In **Nakul Deo Singh v. Deputy Commandant** [1999 (3) KLT 629], it was held by this Court that where the action complained of, takes place outside the territorial jurisdiction of a High Court and an appeal therefrom is dismissed by an authority located outside the jurisdiction of that High Court, the cause of action wholly arises outside the jurisdiction of that High Court and Article 226 (2) of the Constitution cannot be invoked to sustain a writ petition on the basis that the appellate order communicated from the seat of the appellate authority was received while the petitioner was residing or working within the jurisdiction of that Court. In **Navinchandra N. Majithia v. State of Maharashtra** (AIR 2000 SC 2966), it was held that the question of exercising the power would depend upon the cause of action and not the seat of the authority. In **Kusum Ingots & Alloys Ltd. v. Union of India** [2004 (6) SCC 254], the Apex Court held

that, having regard to Clause (2) of Article 226, even if a small fraction of cause of action accrues within the jurisdiction of a Court, it would have jurisdiction in the matter. In **Alchemist Limited v. State Bank of Sikkim** (AIR 2007 SC 1812), the Apex Court held that, to decide whether the facts averred by the petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential or integral part of the cause of action. Following the aforesaid decisions, the Division Bench of this Court has re-iterated in **Capt. B.S.Prakash v. Food Corporation of India and others** [2007 (4) ILR Ker.73] that merely because the decision on the departmental appeal by a delinquent employee is communicated to him while he works within the territorial jurisdiction of a particular High Court, cause of action cannot be treated to arise, even partly, within the territories falling within the jurisdiction of that Court, to sustain a writ petition on the strength of Article 226(2) of the Constitution.

7. Bearing the aforesaid in mind, it has to be noted that the acts of commissions and omissions attributed to the petitioner were those in relation to discharge of his duties and functions in connection with his employment in the Navy in Andaman and Nicobar Islands, which area is not within the territorial jurisdiction of this Court. The Court Martial proceedings were held at Port Blair. The seats of the CNS and the Ministry in the Government that passed the appellate order are also away from the territorial jurisdiction of this Court. None of the impugned actions has taken place within the jurisdiction of this Court.

8. I may also notice that according to the petitioner, he was posted at Cochin while the Court Martial proceedings were initiated and he was accordingly attached to INS, Jarawa at Port Blair on 24th November, 1994. Such attachment of the petitioner to INS Jarawa would not

improve the case of the petitioner on the question of jurisdiction. This is because, wherever he was, the proceedings initiated against him related to alleged omissions while working at Port Blair leading to Court Martial proceedings in Port Blair, imposition of punishment and consequential decisions by the CNS and the Government of India. Therefore, it would be improper even to apply the doctrine of forum conveniens, noticed by this Court in **Capt. B.S.Prakash's** case (supra) as emerging in **Kusum's** case (supra). The mere fact that the petitioner had been transferred out of Port Blair during the course of his employment, much before initiation of the proceedings against him on counts of alleged actions and omissions while in Port Blair and as a consequence, he was placed in Cochin at the time of initiation of the proceedings, does not, in any manner, confer jurisdiction on this Court by treating that a part of the cause of action in relation to the case has arisen within the territorial jurisdiction of this Court.

9. It was also argued on behalf of the petitioner that by the entertainment of his earlier writ petition and the issuance of Ext.P3 judgment, the respondents are precluded from raising the question of jurisdiction. The question of jurisdiction in the case in hand is not that the petitioner has a better among different forums to choose but that this Court does not have jurisdiction at all. The mere entertainment of the earlier writ petition does not conclude the issue on the question of jurisdiction even if the respondents had raised such an issue because that judgment does not specifically speak on that point. That apart, consent cannot confer jurisdiction. On the face of the total absence of jurisdiction, it is impermissible to compel the respondents to face a litigation on merits before this Court, which lacks jurisdiction to entertain the issue.

10. Applying the principles emerging from Article 226 of

the Constitution as enunciated in the precedents noticed above, the objection on behalf of the respondents on the question of territorial jurisdiction is only to be sustained. Hence, I find that this Court has no territorial jurisdiction to try this writ petition.

In the result, this writ petition is dismissed without prejudice to contentions on merits.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/

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P.S.to Judge.